Hampton Lumber Mills-Washington, Inc. ***and*** **Lumber and Sawmill Workers Union #2767 a/w United Brotherhood of Carpenters & Joiners of America, AFL–CIO.** Case 19–CA–26789

May 31, 2001

DECISION AND ORDER

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

On August 3, 2000, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Respondent filed exceptions and a brief in support of its exceptions. The General Counsel and the Charging Party filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, and to adopt the recommended Order as modified[1] and set forth in full below.

1. For the following reasons, we agree with the judge that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union as of November 30, 1999.[2]

The Respondent began operations at Randle, Washington on November 4.[3] By the end of November, a substantial and representative complement of employees had been hired, a majority of whom had been previously employed by the predecessor. On November 30 the Respondent received a letter dated November 24 from the Union, demanding recognition as the representative of the unit employees. By letter dated November 30 the Respondent replied that it had referred the Union's letter to its counsel and would respond shortly. On December 8 the Respondent received a petition signed by a majority of the unit employees stating that the employees did not want to be represented by the Union. By letter dated December 8 the Respondent declined to recognize the Union, informing the Union that it had received a petition signed by 90 of the 116 employees at the Randle facility stating that they did not want to be represented by the Union and that as a result, the Respondent was filing a petition with the Board requesting an election. On December 9 the Respondent filed its RM petition, and on December 16 the Union filed the instant unfair labor practice charge.[4]

A successor employer's obligation to recognize the union attaches after the occurrence of two events: (1) a demand for recognition or bargaining by the union; and (2) the employment by the successor employer of a "substantial and representative complement" of employees, a majority of whom were employed by the predecessor. *Royal Midtown Chrysler Plymouth*, 296 NLRB 1039, 1040 (1989). In the instant case, the judge found, and we agree, that the Respondent was a successor employer, that the Union made a legally sufficient demand for recognition, that the Respondent received the Union's demand on November 30, and that by November 30 the Respondent had hired a "substantial and representative complement" of unit employees, a majority of whom had been employed by the predecessor. Accordingly, we find that the Respondent was obligated to recognize and bargain with the Union as of November 30, the date it received the Union's demand,[5] and that the Respondent's refusal to recognize the Union on that date constituted a violation of Section 8(a)(5) of the Act.

The Respondent argues that it was not required to recognize and bargain with the Union in light of the December 8 petition from a majority of unit employees stating that they did not want to be represented by the

[1] We shall modify the judge's recommended Order and notice to correct inadvertent errors and substitute a narrow cease-and-desist order for the broad one recommended by the judge. *Hickmott Foods*, 242 NLRB 1357 (1979).

[2] All dates are in 1999, unless stated otherwise.

[3] An employee orientation was held during the week of October 18–22 during which an employee handbook was introduced to the employees and discussed. That handbook contains, inter alia, the following language:

> CONCEPTS
>
> The Company is managed around a number of basic concepts. Every action taken should be in the spirit of promoting these concepts. Employees should use these ideas to evaluate their actions.
>
> . . . .
>
> [I]n today's uncertain world where there are many pressures and anxieties, we want to keep this facility free from any artificially created interruptions which may arise when a union is on the scene. Most employees have chosen not to join a union. We think this is a commendable choice.
>
> . . . .
>
> We do not believe that union representation of our employees would be in the best interest of either the employee, or the facility. We believe that a union would only serve to divide, not unite, its employees and would harm the close working relationship so necessary in achieving the important objective of success in our business. We sincerely believe that any outside third party would seriously impair the relationship between the facility and the employees and could retard the growth of our facility and the progress of our employees.

[4] Processing of the RM petition has been blocked by the filing of the unfair labor practice charge.

[5] As the judge recognized, in the circumstances presented here, an employer's bargaining obligation attaches on the date it receives the bargaining demand. See, e.g., *Northern Montana Health Care*, 324 NLRB 752 fn. 4 (1997), enfd. in part 178 F.3d 1089 (9th Cir. 1999); *USG Acoustical Products*, 286 NLRB 1, 11 (1987).

Union. For the following reasons, we disagree with the Respondent.

In *Lee Lumber*, 322 NLRB 175, 176–178 (1996), affd. in pertinent part and remanded on other grounds 117 F.3d 1454 (D.C. Cir. 1997), the Board reaffirmed it's "practice of presuming that, when an employer unlawfully fails or refuses to recognize and bargain with an incumbent union, any employee disaffection from the union that arises during the course of that failure or refusal results from the earlier unlawful conduct."[6] Absent unusual circumstances, "this presumption of unlawful taint can be rebutted only by an employer's showing that employee disaffection arose after the employer resumed its recognition of the union and bargained for a reasonable period of time without committing any additional unfair labor practices that would detrimentally affect the bargaining." Id. Here, the Respondent's unlawful November 30 refusal to recognize the Union presumptively tainted the December 8 employee petition.[7] The Respondent clearly has not made the showing necessary to rebut the presumption because it never recognized the Union and did not bargain for any period of time. Accordingly, because the December 8 petition was presumptively tainted by the November 30 unfair labor practice and the Respondent has not successfully rebutted the presumption of unlawful taint, we find that the Respondent's refusal to recognize the Union on the basis of the December 8 petition violated Section 8(a)(5) and (1) of the Act.

Further, regardless of whether the Respondent had properly recognized the Union on November 30, the Respondent could not have lawfully withdrawn recognition from the Union on December 8. As found by the judge, under the rationale of *St. Elizabeth Manor, Inc*., 329 NLRB 341 (1999), once the Respondent's obligation to recognize and bargain with the Union attached on November 30, the Union was entitled to a reasonable period of bargaining without challenge to its majority status.[8] Here, a reasonable ~~period of bargaining clearly had no~~t elapsed by the time had not elapsed by the time the December 8 petition was presented to the Respondent by its employees.[9]

Accordingly, we conclude that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union.

2. For the reasons fully set forth in *Caterair International*, 322 NLRB 64 (1996), we find that an affirmative bargaining order is warranted in this case as a remedy for the Respondent's unlawful refusal to recognize and bargain with the Union. We adhere to the view, reaffirmed by the Board in that case, that an affirmative bargaining order is "the traditional, appropriate remedy for an 8(a)(5) refusal to bargain with the lawful collective-bargaining representative of an appropriate unit of employees." Id. at 68.

In several cases, however, the U.S. Court of Appeals for the District of Columbia Circuit has required that the Board justify, on the facts of each case, the imposition of such an order. See, e.g., *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727 (D.C. Cir. 2000); *Lee Lumber & Bldg. Material v. NLRB*, 117 F.3d 1454, 1462 (D.C. Cir. 1997); and *Exxel/Atmos v. NLRB*, 28 F.3d 1243, 1248 (D.C. Cir. 1994). In the *Vincent* case, the court summarized the court's law as requiring that an affirmative bargaining order "must be justified by a reasoned analysis that includes an explicit balancing of three considerations: (1) the employees' §7 rights; (2) whether other purposes of the Act override the rights of employees to choose their bargaining representatives; and (3) whether alternative remedies are adequate to remedy the violations of the Act." Id. at 738.

Although we respectfully disagree with the court's requirement for the reasons set forth in *Caterair*, we

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[6] This presumption applies whether or not the employees actually know that the employer is unlawfully refusing to deal with the union. *Lee Lumber*, supra, 322 NLRB at 177.

[7] The signatures on the petition all postdated the Respondent's November 30 unlawful refusal to recognize the Union. The vast majority of the signatures were dated December 2, with additional signatures dated December 3, 6, 7, and 8. Some signatures dated after December 8 were also later submitted to the Respondent.

[8] In *St. Elizabeth Manor*, relied on by the judge, the Board clearly held that, once a successor employer's obligation to bargain has attached, the Union is entitled to a reasonable period for bargaining, during which there is a bar "to the processing of a petition *or to any other challenge to the union's majority status.*" Id., at 344 fn. 8 (emphasis supplied). Thus, the Board has returned to the principle expressed in *Landmark International Trucks*, 257 NLRB 1375 (1981), enfd. denied 699 F.2d 815 (6th Cir. 1983), that a successor employer violates Sec. 8(a)(5) if it withdraws recognition before a reasonable period of time for bargaining has elapsed, whether that withdrawal is based on a good-faith doubt of the union's continuing majority status or evidence of actual loss of majority status. See *St. Elizabeth Manor*, supra. Accordingly, the contrary view, as expressed in *Harley-Davidson Co.*, 273 NLRB 1531 (1985), is clearly no longer good law after *St. Elizabeth Manor*.

[9] There are additional facts in the record reinforcing our finding that the December 8 petition did not reflect the true wishes of the employees concerning union representation. Specifically, we refer to the employee handbook, which did not merely express the Respondent's opposition to union representation, but also told employees that they should "evaluate their actions" accordingly. The handbook went on to assert that a union "would seriously impair the relationship between the facility and the employees and could retard . . . the progress of . . . employees." Especially at a time as "unsettling" as a transition between employers, employees "will be concerned primarily with maintaining their new jobs" and "might be inclined to shun support for their former union, especially if they believe that such support will jeopardize their jobs with the successor." *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27, 39–40 (1987).

have examined the particular facts of this case as the court requires and find that a balancing of the three factors warrants an affirmative bargaining order.

(1) An affirmative bargaining order in this case vindicates the Section 7 rights of the unit employees who were denied the benefits of collective bargaining by the employer's refusal to recognize and bargain with the Union. At the same time, an affirmative bargaining order, with its attendant bar to raising a question concerning the Union's continuing majority status for a reasonable time, does not unduly prejudice the Section 7 rights of employees who may oppose continued union representation because the duration of the order is no longer than is reasonably necessary to remedy the ill effects of the violation.

Moreover, ordering the successor employer to bargain for a reasonable period of time with the incumbent union, as in this case, serves "to protect the newly established bargaining relationship and the previously expressed majority choice, taking into account that the stresses of the organizational transition may have shaken some of the support the union previously enjoyed." *St. Elizabeth Manor*, supra, 329 NLRB at 345. In successorship situations, the employees' anxiety about their status with the successor employer could lead to their disaffection before the Union has the opportunity to demonstrate its continued effectiveness,[10] and could tempt a reluctant successor employer to postpone its statutory bargaining obligation indefinitely. Ibid. To require bargaining to continue only for a reasonable period of time, not in perpetuity, fosters industrial peace and stability and will ensure that the bargaining relationship established between the Respondent and the Union will have a fair chance to succeed. Ibid.

(2) The affirmative bargaining order also serves the policies of the Act by fostering meaningful collective bargaining and industrial peace. That is, it removes the Respondent's incentive to delay bargaining in the hope of further discouraging support for the Union. It also ensures that the Union will not be pressured, by the possibility of a decertification petition or by the Respondent's withdrawal of recognition, to achieve immediate results at the bargaining table following the Board's resolution of its unfair labor practice charges and issuance of a cease-and-desist order.

(3) A cease-and-desist order, without a temporary decertification bar, would be inadequate to remedy the Respondent's violations because it would permit a decertification petition to be filed before the Respondent has afforded the employees a reasonable time to regroup and bargain through their representative in an effort to reach a collective-bargaining agreement. Such a result would be particularly unfair in circumstances such as those here, where the Respondent's unfair labor practice was of a continuing nature and was likely to have a continuing effect, thereby tainting any employee disaffection from the Union arising during that period or immediately thereafter. We find that these circumstances outweigh the temporary impact the affirmative bargaining order will have on the rights of employees who oppose continued union representation.

For all the foregoing reasons, we find that an affirmative bargaining order with its temporary decertification bar is necessary to fully remedy the allegations in this case.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Hampton Lumber Mills-Washington, Inc., Randle, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain in good faith with the Union, Lumber and Sawmill Workers Union #2767, a/w United Brotherhood of Carpenters & Joiners of America, AFL–CIO, as the exclusive representative of the employees in the bargaining unit set forth below:

> All employees, including part time and temporary employees, employed at [the Respondent's Randle] Facility; excluding all office personnel, superintendents and supervisors, as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and bargain with the Union as the exclusive bargaining representative of the employees in the unit set forth above concerning employees' terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its Randle, Washington, facility copies of the at-

[10] Here, because the Respondent never recognized or bargained with the Union, the December 8 petition did not reflect free choice under Sec. 7 but rather the effect of the Respondent's unlawful refusal to bargain.

tached notice marked "Appendix."[11] Copies of the notice, on forms provided by the Regional Director for Region 19, in English and such other languages as the Regional Director determines are necessary to fully communicate with employees, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 30, 1999.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

MEMBER TRUESDALE, concurring.

In agreeing with my colleagues that the Respondent violated Section 8(a)(5) and (1) when it refused to recognize and bargain with the Union following the Union's demand for recognition, I rely only on the finding that under the rationale of *St. Elizabeth's Manor, Inc.*, 329 NLRB 341 (1999), the Respondent, as a successor, was obligated to recognize the Union and bargain for a reasonable period without challenge to its majority status. I agree with my colleagues, for the reasons they state, that an affirmative bargaining order is warranted in this case.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain in good faith with the Lumber and Sawmill Workers Union #2767, a/w United Brotherhood of Carpenters & Joiners of America, AFL–CIO as the exclusive representative of our employees in the bargaining unit set forth below:

All employees, including part time and temporary employees, employed at [our Randle] Facility; excluding all office personnel, superintendents and supervisors, as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and bargain with the Union as the exclusive bargaining representative of the employees in the appropriate bargaining unit concerning terms and conditions of employment and, if an understanding is reached, WE WILL embody such understanding in a signed agreement.

HAMPTON LUMBER MILLS-WASHINGTON, INC.

Peter G. Finch, Esq., for the General Counsel.
Nelson D. Atkin II, Esq. (Barran Liebman), of Portland, Oregon, for the Respondent.
Harlan Bernstein, Esq. (Jolles, Bernstein & Garone), of Portland, Oregon, for the Charging Party.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. I heard this case in trial on June 13, 2000, in Seattle, Washington, pursuant to a complaint and notice of hearing, as amended, issued by the Regional Director for Region 19 of the National Labor Relations Board on February 29, 2000. The complaint is based on a charge filed by Lumber and Sawmill Workers Union #2767, affiliated with United Brotherhood of Carpenters & Joiners of America, AFL–CIO (the Union) on December 16, 1999, and docketed as Case 19–CA–26789 against Hampton Lumber Mills-Washington, Inc. (the Respondent). The charge was amended on February 2, 2000.

The complaint alleges that the Respondent was a successor to a former employer whose employees in an appropriate bargaining unit had been represented by the Union. The complaint further alleges that the Union, by letter received by the Respondent on November 30, 1999, requested the Respondent recognize and bargain with the Union as the repre-

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

sentative of employees in the bargaining unit. The complaint further alleges that the Respondent, initially by letter on December 8, 1999, and at all times thereafter, has failed and refused to recognize and bargain with the Union as representative of the employees. The complaint finally alleges that this refusal is in violation of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).

The Respondent alleges that it was at no time obligated to recognize the Union as the representative of its employees as alleged in the complaint, and therefore denies that it has violated the Act as alleged.

FINDINGS OF FACT

On the entire record, including a comprehensive stipulation of facts, helpful briefs from the Respondent and the Charging Party, and oral argument from the General Counsel, I make the following findings of fact.[1]

I. JURISDICTION

The Respondent, a Washington State corporation, with offices and places of business in Randle, Morton, and Napavine, Washington, has been engaged in the milling and sales of wood products. The Respondent, in the course and conduct of its business during the year preceding the filing of the complaint (a representative period), sold or shipped goods within the State of Washington to customers outside the State, or sold and shipped goods to customers within the State, which customers were themselves engaged in interstate commerce by other than indirect means, of a total value in excess of $50,000.

Based on the above, the parties stipulated and I find the Respondent is and has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The parties stipulated and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

An employer, Pacific Lumber and Shipping Co. (Pacific), through its operating division, Cowlitz Stud, operated lumber manufacturing facilities in Morton, Packwood, Randle, and Napavine, Washington for many years. The employees at each facility historically constituted a separate bargaining unit. The Union had represented the Randle, Morton, and Packwood units for over 30 years with the most recent collective-bargaining agreements effective by their terms from June 1, 1996, to May 31, 2000. Packwood was shut down in late 1998. On May 28, 1999, Pacific terminated the last of its unit employees at Randle and Morton. At that time all unit employees were dues-paying members of the Union.

The Pacific-Union contract respecting its Randle, Washington facility, describes the bargaining unit as follows:

> All employees, including temporary and part time employees, except supervisors, superintendents and office personnel.

The Respondent announced on March 27, 1999, that it had signed an agreement with Pacific to purchase its facilities in Morton, Packwood, Randle, and Napavine, Washington. On June 1, 1999, the Respondent completed the purchase of the facilities and started the hiring process at facilities other than Randle. Those facilities are not in contention here.

The Randle facility is a stud mill processing logs into 2 by 4s and 2 by 6s used in the domestic residential construction industry. The Respondent, in August 1999 offered employment to approximately 90 percent of the former unit employees at the facility and essentially all accepted employment.

On November 4, 1999, the Respondent started day-shift sawmill operations at Randle. On November 15, 1999, it started the swing shift, on November 22, 1999, it started the day-shift planer operations, and on December 6, 1999, it started the swing-shift planer operations. There were approximately 116 unit employee positions. Of that number approximately 69 had been employed in the predecessor unit immediately prior to the sale. Thus, a clear majority of the bargaining unit was from the predecessor unit.

The parties stipulated that on November 30, 1999, the Respondent received a letter from the Union dated November 24, 1999, demanding recognition as the bargaining agent for the Randle employees. The letter was on the letterhead of the Western Council of Industrial Workers, a group of United Brotherhood of Carpenters and Joiners of America local unions, including the Union, with the same Portland, Oregon, address as the Union's address on the instant charge and, was signed by Michael H. Pieti, "Executive Secretary On Behalf of Local 2767." The letter was sent to the Respondent's Randle facility's Cowlitz' division operations manager. It asserted:

> Re: Randle, Washington—Hampton Lumber Mills
>
> Please be advised that as of [November 24, 1999] it is our understanding that you have hired a majority of employees at your newly acquired operation (formerly Pacific Lumber and Shipping) which were employees represented by our Union.
>
> I am sure you are aware that under the National Labor Relations Act you are now required to recognize our Union as the bargaining agent for all employees at that location. We are therefore making a formal demand that you comply with the National Labor Relations Act and recognize our Union as the bargaining agent for all employees at your Randle operations.

The Respondent replied initially by letter dated, November 30, 1999, that it had referred the Union's demand letter to its labor counsel and would respond shortly. By letter dated December 8, 1999, the Respondent declined to recognize the

[1] As a result of the pleadings and the stipulations of counsel at the trial, there were few disputes of fact. Further the parties agreed to amend their pleadings to conform to the stipulated facts. Such emendations, including for example, the correct legal name of the Respondent, have been made throughout the decision without individual annotation. Where not otherwise noted, the findings here are based on the pleadings, the stipulations of counsel, and/or unchallenged credible evidence.

Union. The Respondent had not recognized nor bargained with the Union respecting the Randle unit to the close of the record here.

B. Analysis and Conclusions

1. Does the Respondent meet the tests of successorship?

The Supreme Court in *NLRB v. Burns Security Services,* 406 U.S. 272 (1972), established the doctrine of successorship and the circumstances under which the obligation of an earlier or predecessor employer to recognize and bargain with a labor organization might succeed to a later or successor employer. In a series of cases the Court established that a union that had represented a unit of employees of a predecessor employer would enjoy a presumption of continuing majority amongst a successor employer's employees in certain circumstances.[2] As further fleshed out by the Board in response to the teaching of the Court, the requirements of successorship include: (1) that there be substantial continuity of identity in the employing industry, i.e., whether there have been substantial and material changes in the employing industry, (2) that, there be continuity of the appropriate bargaining unit and, (3) that there be a continuity of workforce, i.e., that the successor bargaining unit contain a majority of employees from the predecessor unit represented by the union. If the General Counsel has established these factors, the union enjoys a presumption of majority status, which on a demand for recognition, obligates an employer to recognize and bargain with the union respecting the unit employees. Finally, the Board in *St. Elizabeth Manor, Inc.*, 329 NLRB 341 (1999), established that once a successor's obligation to recognize an incumbent union has attached, the union is entitled to a reasonable period of bargaining without challenge to its majority status.

It is appropriate to consider each of the requirements of a successorship as they pertain to the Respondent.

Turning initially to the question of substantial continuity of identity in the employing industry, i.e., whether there have been substantial and material changes in the employing industry, the record indicates that the Respondent's operations, while modernized, utilize the same raw materials (trees) to produce the same final product, dimension lumber, as had the former operator. There was no serious question that sufficient continuity of identity in the employing industry was present in the instant case.

Respecting the issue of the continuity of the appropriate bargaining unit, the question encompasses two separate issues: continuity and appropriateness.

There is no doubt or question that the Pacific unit was appropriate for purposes of collective bargaining within the meaning of Section 9 of the Act, and, I so find. The General Counsel alleges at complaint paragraph 6(a) that the following unit of the Respondent's Randle operations has been, at all times since November 1999, appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All employees, including part time and temporary employees, employed at [the Respondent's Randle] Facility; excluding all office personnel, superintendents and supervisors, as defined in the Act.

The unit description is in essence the most recent Pacific collective-bargaining agreements unit description tidied up by the inclusion of the Act's definition of supervisor.

The Respondent, in its answer, initially denied the appropriateness of the former Pacific unit's insofar as it applies to the Respondent's facility, seemingly based on its operation of the Randle facility "as an integrated entity with Respondent's facility located at Morton, Washington." At the trial, however, counsel for the Respondent in colloquy with counsel for the Charging Party made it explicitly clear that the Respondent was no longer contesting the appropriateness of the unit. Further, no evidence contrary to the broad single-facility unit was offered.

I find there is no dispute for purposes of this proceeding that the two units alleged by the General Counsel in its complaint were at all times material appropriate for bargaining within the meaning of the Act. Having found that the former and current units are not only statutorily appropriate but are identical, I further find that there is continuity of the appropriate bargaining unit.

Turning to the issue of the continuity of the workplace, i.e., whether or not the successor bargaining unit contains a majority of employees from the predecessor unit represented by the Union, there is once again no dispute. By the date of the Respondent's receipt of the Union's demand letter on November 30, 1999, the Respondent's startup of the Randle operations was essentially complete.[3] Of the 116 unit employees employed at that time, 69 were from the former Pacific unit. Based on these numbers, I find there was continuity of the workplace.

Given all the above, I find there is no question that the Respondent's Randle bargaining unit is the successor of the Pacific bargaining unit.

The issue remaining is whether or not the Union made a legally sufficient demand for recognition as required by the Supreme Court in *Fall River Dyeing Corp. v. NLRB*, 482 U.S. at 52. There is no dispute that the Respondent received the Union's demand on November 30, 1999. To the extent that the demand was on the letterhead of another entity and an issue may be raised respecting its argued ambiguity, I make two separate findings. First, I find that the demand was unambiguous clearly identifying the demand as coming from the Union and not some other entity. The Respondent well knew that Pacific had contracts with the Union and the letter made it clear that the "Union" that represented the predecessor's unit was the one seeking recognition.

[2] *H. K. Porter Co. v. NLRB*, 397 U.S. 99 (1970); *NLRB v. William J. Burns International Detective Agency*, 406 U.S. 272 (1972*). Howard Johnson Co. v. Detroit Joint Board Hotel & Restaurant Employees*, 417 U.S. 249 (1974); *NLRB v. Fall River Dyeing Corp*., 482 U.S. 27 (1987).

[3] Only the swing-shift planer operations—a small part of total operations—were yet to be begun. These began on December 6, 1999, and all but one of those employees had already been hired by the end of November 1999.

Second, even were there a sufficient basis for confusion—a finding I explicitly do not make—the Board holds that when faced with an ambiguous demand for recognition involving the identity of the demanding union, the employer must act "to clarify the ambiguity and ascertain the relationship between [the two Unions involved]," *Parkview Manor*, 321 NLRB 477 fn. 2 (1996). See also *RTP Co.,* 323 NLRB 15, 22 fn. 15 (1997). Since the Respondent never inquired respecting such a possible ambiguity, it may not now rely on it to discount the force of the demand for recognition.

Given all the above, I find that the Union made a legally sufficient demand for recognition.

Having found that the Respondent's Randle unit is a successor to the Pacific unit and having further found that the Union made a legally sufficient demand for recognition as the exclusive bargaining representative of the unit on November 30, 1999, it follows, and I further find, that from that date the Respondent was obligated to recognize and bargain with the Union as the representative of unit employees.[4]

2. The Respondent's postdemand defenses

The Board in *St. Elizabeth Manor, Inc*., supra, established that once a successor's obligation to recognize an incumbent union has attached, the union is entitled to a reasonable period of bargaining without challenge to its majority status. Since the Respondent has never recognized, and thus, never afforded the Union any period of bargaining whatsoever, under *St. Elizabeth* there may be no post-bargaining obligation challenge to its majority status.

The Respondent makes two arguments respecting *St. Elizabeth Manor*. First, the Respondent argues that because the Respondent's hiring was "well under way, and a substantial majority of its employees had been hired before the *St. Elizabeth Manor* decision was issued" (R. Br. 6), that the decision should not be applied retrospectively to the Randle facility. Second and more broadly, with commendable frankness, the Respondent asserts that it does not regard the Board's *St. Elizabeth Manor* doctrine as sustainable, asserts that the dissent in the decision is the better view and finally asserts that it intends to challenge the holding in the appropriate United States Court of Appeal in this decision if necessary.

These arguments of the Respondent are not for me to consider. I am bound by the holdings of the Board and the Board's *St. Elizabeth Manor* decision is both clear and not limited to prospective application in the manner the Respondent desires. The Respondent's arguments and evidence in these regards are for higher authority than the trial administrative law judge. Accordingly, I shall not further address those arguments of the Respondent or the opposing arguments of the General Counsel or the Charging Party. I therefore reject the Respondent's arguments that *St. Elizabeth Manor* is not controlling in the instant case.

This being so, I do not find relevant, nor a defense to the violation found, post-demand letter receipt evidence offered by the Respondent to suggest the Respondent was not obligated to bargain with the Union because the Union did not have—or the Respondent had a good-faith reason to believe that the Union did not have—the support of a majority of unit employees.

3. Summary and conclusion

I have found substantial continuity of identity in the employing industry, continuity of the appropriate bargaining unit, and continuity of the work force, i.e., that the successor bargaining unit contains a majority of employees from the predecessor unit represented by the Union. I have found a timely demand for recognition by the Union. As of the date of the receipt of the Union's demand, I found that the Respondent was obligated to recognize and bargain with the Union as the representative of the employees in the unit. I further found that the Union was entitled to a reasonable period of bargaining without challenge to its majority status. That being so, I rejected the Respondent's arguments and evidence that after the Union's demand letter was received circumstances arose which justified its withholding recognition and bargaining from the Union.

Given, the noted obligations and the admitted failure of the Respondent to continue at anytime to recognize and bargain with the Union, I find that its failure and refusal to recognize and bargain with the Union respecting the Randle unit, on and after November 30, 1999, violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes and policies of the Act. I shall also order Respondent to recognize and bargain with the Union as the exclusive representative of all its employees in the Randle unit.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all times since November 30, 1999, the Union has been the exclusive representative for purposes of collective bargaining of the Respondent's Randle employees in the following unit:

> All employees, including part time and temporary employees, employed at [the Respondent's Randle] Facility; excluding all office personnel, superintendents and supervisors, as defined in the Act.

[4] The Respondent initially sought additional time to investigate the propriety of recognizing the Union. When an employer in a reasonable time after a demand recognizes the union, there is no violation of the Act for its failure to do so instantly. Where an employer in violation of the Act fails to recognize a labor organization in the circumstances here presented, the violation commences—akin to the timing in the doctrine of trespass ab initio—with the receipt of the demand.

4. Commencing on November 30, 1999, and continuing to date, the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union as the exclusive representatives of employees in the unit described above for purposes of collective bargaining.

5. The above unfair labor practices constitute unfair labor practices effecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]